

**UNITED STATES OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,

-against-

05-1157 (LAK)

RAHEEN DAVIS,

-----X

**DEFENDANT'S PROPOSED
EXAMINATION OF PROSPECTIVE JURORS
AND RESPONSE TO GOVERNMENT PROPOSAL**

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EXAMINATION OF PROSPECTIVE JURORS**

I will accept the Government order in their May 1, 2008 proposal for purposes of simplicity in addressing the proposed juror questions. Where I have additions, subtractions, or comments, I will use the Government's order. Additions will be in italics, subtractions will be cross outs and comments will be bracketed.

A. The Charge

I would revise paragraph 2 in the following manner:

The indictment is not evidence ~~itself~~. It ~~simply~~ contains the charges that the Government is required to prove to the satisfaction of the jury beyond a reasonable doubt. *The defendant is presumed innocent and cannot be convicted unless the jury, unanimously and based solely on the evidence in this case, decides that his guilt has been proven beyond a reasonable doubt. The burden of proving guilt*

rests entirely with the government. The defendant has no burden of proof at all.

Will you be able to accept and apply that principle of law?

[Then start a new paragraph with the next sentence]

3. I would like to summarize the charge in this case in order to determine whether there is anything about the nature of case which may make it ~~difficult or inappropriate~~ *impossible* for any of you to serve on the jury.

[The standard is not difficult or inappropriate. A jury's responsible ought to be difficult. The question is whether it would be impossible for a juror to render a fair and impartial verdict.]

[Present paragraph 3 is now paragraph 4 and is acceptable]

[Present paragraph 4 is now paragraph 5]

5. Do any of you ~~believe you~~ have personal knowledge of the charges contained in this indictment ~~as I have described it?~~

6. Do any of you feel that due to the nature of the charges that you will not be able to decide this case fairly and impartially?

B. Knowledge of the Trial Participants

_____ 7. [Obviously, the defendant cannot rise due to the shackling. I would suggest that the Government lawyers, the Agents or the defense counsel should rise when they are introduced.][Numbering should add two]

10. Omit "as in all cases where it is a party before this court". [This is unnecessary. The jurors are here to decide this case.]

C. Relevant Location

[I am not sure this is necessary. Many people may be familiar with this neighborhood. The issue is whether they will allow their familiarity to affect their ability to decide the case fairly and impartially.]

D. Relationship with Government

14. Has any juror, either through any experience he or she has had or anything he or she has seen, ~~or~~ read *or heard*, developed any bias, prejudice *or favor* for or against the ~~NYPD~~ New York Police Department, the ~~ATF~~ Alcohol, Tobacco and

Firearm, the United States Attorney's Office, or any other law enforcement agency.

[The other paragraphs are acceptable.]

E. Prior Jury Service

_____[Acceptable]

F. Experience as a Witness, Defendant or ~~Crime~~ Victim

_____[Due to the circumstances, jurors will not be able to approach since the defendant will be unable to be present. I will ask that these questions be asked in open court one by one]

17 [now 19] Have you ever been a witness ~~or complainant~~ *for the Government or the defense* in any federal or state case ~~prosecution~~.

[The rest is acceptable]

G. Ability to Render a Fair and Impartial Verdict

23. [now 25] Omit "as you can tell" [Unnecessary surplusage]

H. Law Enforcement Witnesses

_____[I would change this completely]

26. [now 28]

Several witnesses in this case will be law enforcement officers.

- (a) *Do you hold any beliefs or opinions that would affect your ability to evaluate the testimony of a law enforcement officer fairly and impartially*
- (b) *A law enforcement witness's testimony is not to be given any more or less credence than any other witness's testimony simply because that witness is a law enforcement officer.*

Will you accept and apply this rule of law?

- (c) *Do you have an opinion that could affect you ability to decide this case fairly and impartially as to the conduct of law enforcement officers in predominantly minority neighborhoods?*

28. [now 30]

[I would omit this question as confusing, but if it is asked that it be in the positive]

I. New Section entitled Cooperating Witnesses

31. Several key government witnesses are expected to testify that they participated in the crimes charged in the indictment. These witnesses, some of whom have lengthy histories of narcotics trafficking and violent criminal conduct, have pleaded guilty and are testifying pursuant to cooperation agreements with the government in hopes that their own sentences will be reduced.

- (a) *Would you be able to follow the Court's instructions regarding how to evaluate the credibility of these witnesses.*

I. Other Questions

[Acceptable]

J. Function of the Court and Jury

33. [now 35] Starting with the sentence ["At the conclusion of the case", I will substitute the following:]

At the conclusion of the case, your sworn duty ~~job~~ will be to determine whether the Government has proven the defendant guilty beyond a reasonable doubt. If the Government failed, you will find the defendant Not Guilty, if the Government convinces you beyond a reasonable doubt, you will find the defendant Guilty. Will each of you be able to follow the Court's instructions? _____

Omit the rest of the paragraph

35. [Omit this paragraph]{ If it is to be included, it should include sympathy to the victims and the deceased. I believe it is better left out.]

36. Omit [This request is unbalanced.]

K. Other Biases Attitudes

_____37. [Acceptable]

L. Juror's Background

38. Under paragraph l.

Add Do you believe that those television shows accurately depict the criminal justice system realistically?

Omit paragraph o.

[I would also add *children in the household and their ages*]

Dated: New York, New York
May 2, 2008

Respectfully submitted,

/S/

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